Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

CENTURY MARINE, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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F.D.

QUESTION PRESENTED

Does 48 C.F.R. § 49.402-2 (1998) expressly entitle a defaulted contractor to seek recovery for portions of the contract it completed and delivered?

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OPINIONS BELOW

The majority and concurring opinions of the United States Court of Appeals for the Fifth Circuit are reported at 153 F.3d 225 and reprinted at Pet. App. 1. The final judgment of the United States District Court for the Southern District of Texas is unreported and reprinted at Pet. App. 16 and the fact and conclusions of law of the district court are reprinted at Pet. App. 17.

JURISDICTION

The court of appeals entered judgment on August 27, 1998 and denied a timely petition for rehearing on October 29, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). In addition, this case involves a decision by a federal court of appeals on an important question of federal government contracts law that has not been settled by this Court. *See* S. Ct. R. 10(a).

FEDERAL REGULATION INVOLVED

48 C.F.R. § 49.402-2 provides:

Effect of termination for default . . .

(c) Subject to paragraph (d) below, the Government shall pay the contractor the contract price for any completed supplies, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials, acquired by the Government under the Default clause.

(d) The Government must be protected from overpayment that might result from failure to provide for the Government's potential liability to laborers and material suppliers for lien rights outstanding against the completed supplies or materials after the Government has paid the contractor for them. . . .

STATEMENT OF THE CASE

This is an appeal from a judgment in a suit against the United States on a maritime contract. The District Court entered judgment against Century Marine, Inc. ("Century") after a bench trial, and the court of appeals affirmed. The issue in this appeal is whether Century was entitled under an express federal regulation to be paid for work it completed and delivered pursuant to a government contract before the contract was terminated.

Century contracted with the United States Department of Transportation, Maritime Administration (the "Government") to repair the SS MOUNT WASHINGTON, a ship owned by the Government. After Century completed most, but not all, of the contract, the Government determined that Century had defaulted. The Government then terminated the contract. The contract price at the time of termination, including eight prior contract modifications, was $8,341,910.00.

After termination, the Government issued Modification 9. *See* Pet. App. ___. Modification 9 adjusted the contract price by deducting the Government's cost of completion. The modified contract price, reflecting the portion of the job that Century completed, was

$7,081,049.00. *See* Pet. App. 38. The Government, however, made payments to Century totaling only $6,312,159.46, and refused to pay the remainder of the contract price.

Century sued for, among other things, the unpaid balance of the contract price for the work that Century had performed at the time of termination, but for which Century had not been paid. The District Court entered judgment denying all relief. The Court of Appeals for the Fifth Circuit affirmed the District Court. *Century Marine, Inc. v. United States*, 153 F.3d 225 (5th Cir. 1998). The majority held that Century was not entitled to recover any of the remaining unpaid contract balance. *See* 153 F.3d at 232.

REASONS FOR GRANTING THE WRIT

The court of appeals held that, as a matter of law, a defaulted government contractor is not entitled to recover payment for the portion of the contract that the contractor completed. *See* 153 F.3d at 230. That holding is contrary to the express grant of recovery provided under 48 C.F.R. § 49.402-2 as well as the holdings of the United States Court of Federal Claims.

1. **By either overruling or ignoring 48 C.F.R. § 49.402-2, the court of appeals' ruling strips defaulted government contractors of their right to recover for the portions of contracts that they complete before termination.**

Federal regulation expressly provides that, upon termination of a contract for default, a government contractor is entitled to recover the "contract price" for completed supplies acquired by the Government. 48 C.F.R. § 49.402-2 (1998). Thus, a defaulted contractor is entitled to payment of the value of what it furnished, less any excess Government reprocurement costs and any payments the contractor received. *See Melville Energy Systems, Inc. v. United States*, 33 Fed. Cl. 616, 620 (1995).

The court of appeals' holding eviscerates this express regulatory right of recovery. Century delivered items under the contract valued by the Government itself at more than $768,000 in excess of the amount that Century was paid. Further, there was no evidence that the Government incurred any excess reprocurement costs in completing the remaining work under the contract or any liability to laborers and material suppliers for lien rights on the materials Century provided. Nonetheless, the court of appeals held that "Century cannot, as a matter of law, recover the 'unpaid balance' of the contract less the 'cost of completion' of the work under the contract." 153 F.3d at 230. In effect, the court of appeals held that the Government is not required to pay any additional funds after a termination for default. This ruling irreconcilably conflicts with both 48 C.F.R. § 49.402-2 and the holding in *Melville Energy Systems*.

2. The court of appeals' reasoning is mistaken because recovery of the contract price for completed work constitutes payment for the contractor's costs and earned profits, not payment for unearned profits.

The majority opinion mistakenly assumed that permitting a government contractor to recover the unpaid balance of the contract less the Government's cost of completion allows the contractor to recover "anticipated but unearned profits." *See* 153 F.3d at 230. To the contrary, the recovery calculation under the C.F.R. permits the contractor to recover only its *earned* profits, as well as its actual costs, for the portions of the contract the contractor actually completed. *See Mega Construction Co. v. United States*, 29 Fed. Cl. 396, 475 (1993) ("Any recovery of profits on a default terminated contract is limited to earned profit on work actually performed prior to the termination.").

The concurring opinion recognizes that the majority incorrectly assumed that Century's contract balance claim involves a "lost-profit" claim. *See* 153 F.3d at 232. Century's claim is not for anticipated, unearned profits, but only for the agreed contract price for the portions of the contract that Century actually completed and delivered to the Government. To the extent that Century's claim seeks profits at all, it is only earned profits on the completed portions of the contract.

3. **Stripping a defaulted contractor of the right to recover payments for completed portions of the contract is an undue penalty not authorized by statute.**

The interpretation of the C.F.R. announced by the court of appeals would unduly penalize defaulted contractors by depriving them of their right under the C.F.R. to recover payment for the work they completed and delivered. In this case, for instance, even under the Government's own calculation, Century completed work valued under the contract at $7,081,049.00; but Century received payment of only $6,312,159.46. Century provided value to the Government of over $768,000 more than the Government paid Century. The law as announced by the court of appeals is that the government contractor will be denied any contract balance payment once a default is determined, without regard to the value of the contract portion actually delivered.

If a government contractor is no longer entitled to any reimbursement payments after the Government unilaterally terminates a contract for default, terminated contractors will lose much more than their earned profit on the completed portion of the job. For example, if at the time of termination a government contractor's out of pocket costs for the completed portions of the work are $600 million, and the Government has paid the contractor only $100 million, the contractor will suffer a $500 million loss on the contract. The Government, on the other hand, would have the benefit of the completed portions of the contract, but would not have to pay for the work actually completed and would not have to reimburse the contractor's costs for performing that work. The court of

appeals' holding thus results in an impermissible windfall to the Government and constitutes a significant and unjustified extra-statutory penalty for any government contractor whose contract is terminated for default.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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TO: WADE PURCELL

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 97-20281

CENTURY MARINE INCORPORATED,

Plaintiff-Appellant;

VERSUS

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court

For the Southern District of Texas

August 27, 1998.

Before BARKSDALE, BENAVIDES and DENNIS, Circuit Judges.

DENNIS, Circuit Judge:

Appellant Century Marine, Inc. ("Century"), appeals the district court's dismissal of its claims for additional compensation under a fixed-price vessel repair contract with the Maritime Administration of the United States Department of Transportation ("MARAD"). MARAD terminated the contract because of Century's default in failing to complete the work within the time specified by the contract. Century filed suit against the United States seeking

to have the termination for default converted to a termination for the Government's convenience; and for payments in addition to the amount MARAD had paid Century under the terminated contract. After a bench trial, the district court rejected Century's demands and dismissed its suit with prejudice. We affirm. On appeal Century does not contest the trial court's determination that its contract was properly terminated for default. Despite its default, Century argues that it is entitled to recover an amount equal to the unpaid balance of the full fixed price of the contract less the cost of completion of the unfinished work under the contract. Century's argument is contrary to well established law and federal regulations. Under the Government's termination of a fixed-price contract because of the contractor's default, the Government is not liable to the contractor for unperformed or undelivered work. Anticipated but unearned profits are not recoverable by the contractor when the Government terminates the contract for the contractor's default or for the convenience of the Government. Century's additional contention that it should be compensated for extra work is also without merit. There is warrant in the record and an applicable basis in law for the district court's rejection of this claim after a trial on the merits.

I. FACTUAL AND PROCEDURAL BACKGROUND

In September 1992, Century and MARAD entered into a fixed-price contract for the repair and renovation of cargo and ballast tanks of the S.S. MOUNT WASHINGTON, a public vessel of the United States. Thereafter, MARAD issued three contract modifications ("Mods") that

increased the contract value by $1,050,000.000, for a total contract amount of $8,521,910.000. When Century fell behind schedule on the original completion date of May 3, 1993, MARAD issued three additional Mods that extended the completion date until September 15, 1993. Despite these extensions, Century continued to fall behind its work schedule. When it became evident that Century could not complete the contract timely, by letter dated September 8, 1993, MARAD terminated Century for default.[1] At the time of termination, MARAD had made progress payments to Century of $5,903,135.50. On September 22, 1993, the Government issued Modification No. 0009 ("Mod 9") to the contract that adjusted the contract price for the value of the unfinished work, and calculated the final progress payment to Century based on its completed work. MARAD eventually retained another contractor to finish Century's work.[2]

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[1] Pursuant to the Federal Acquisition Regulations, the Government may, by written notice of default to the contractor, terminate the contract in whole or in part if the contractor fails to perform the services within the time specified in the contract or any extension. 48 C.F.R. § 52.249.8(a)(1)(i). "Federal regulations which are based upon a grant of authority 'have the force and effect of law, and, if they are applicable, they must be deemed terms of the contract even if not specifically set out therein, knowledge of which is charged to the contractor.' " *General Eng'g & Mach. Works v. O'Keefe*, 991 F.2d 775, 780 (Fed. Cir. 1993).

[2] Under the Federal Acquisition Regulations, when the services to be provided by the terminated contractor are still required after default, the contracting officer shall repurchase the same services against the contractor's account as soon as practicable, 48 C.F.R. § 49.402-6(a), and the contractor is liable to the Government for any excess costs incurred in acquiring

Mod 9, admitted as a Government exhibit at trial, sets forth the percentage of completion of each work item, and adjusts the total contract price by deducting the contract value of Century's uncompleted work, estimated at $1,260,861.00. In Mod 9, MARAD based the percentage of completion in part on Century's own percent completion figure provided in its last progress payment request submitted to MARAD one week prior to termination, with this figure adjusted for work accomplished by Century during the final week of the terminated contract. The Government's estimate in Mod 9 of the contract value of Century's uncompleted work also was based on a thorough inspection and videotaping of each item of unfinished work by Richard Volkmann, the contracting officer's technical representative, who testified at trial.

Based on the Government's calculations in Mod 9, MARAD made a final payment to Century of $409,023.56, representing compensation for all work performed after the latest progress payment but before Century was terminated for default. According to the contracting officer's decision denying Century's administrative claims for additional compensation, this final payment to Century represented: (1) payment for the progress made by Century between the time of its last progress payment and termination of the contract ($51,532.00); (2) payment of the balance of retainage owed to Century after deducting the excess cost of procurement ($285,539.06)[3]; and (3)

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services similar to those terminated for default. 48 C.F.R. § 49.402-2(e).

[3] Under the Federal Acquisition Regulations, "the contracting officer shall use all retained percentages of progress

payment of funds withheld at the direction of the Government's legal department until a separate claim on another contract was settled ($71,952.50).

In July 1994, Century submitted a "Request For Equitable Adjustment and For Conversion of a Termination For Default to a Termination For Convenience." Century's Request For Equitable Adjustment presented an administrative claim for additional payments of almost $1.3 million under the contract, based on Century's allegations that MARAD had underestimated the percentage of completion of finished work items in Mod 9, and that MARAD was not entitled to retain excess costs of reprocurement from the retainage withheld from the final payment to Century because Century was wrongfully terminated. Century also asserted a claim for $21,254 in extra work performed pursuant to Century's Request For Delivery Orders (RDOs). Finally, Century requested that its termination for default be converted to a termination for convenience.

In December 1994, the Government's contracting officer issued a final administrative decision on Century's claims, denying any further payments to Century. This 48-page decision, with attached supporting exhibits, rebuts in detail each allegation in Century's Request For Equitable Adjustment, concluding that Century's "termination for default is valid," and that Century "is not entitled to a further equitable adjustment."

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payments previously made to the contractor and any progress payments due for work completed before the termination to liquidate the contractor's liability to the Government." 48 C.F.R. § 49.406.

In September 1994, pursuant to the Contract Disputes Act, 41 U.S.C. § 603, and the Suits in Admiralty Act, 46 U.S.C. § 741 *et seq.*, Century sued the United States in the Court of Federal Claims, which transferred the case to the Southern District of Texas.[4] The United States elected not to file a counterclaim against Century for liquidated damages, which are recoverable against a contractor terminated for default. See 48 C.F.R. §§ 49.402-6(c), 49.402-7, 49.402-2(e). Century's claims were tried to a judge in December 1996.

In the district court, Century presented no evidence supporting the claim in its administrative level Request For Equitable Adjustment that it was entitled to recover the excess costs of reprocurement that the Government had deducted from Century's retainage. Exhibit K of the Contracting Officer's decision, which was the only evidence of the Government's excess reprocurement costs and the amount of retainage withheld at termination, was withdrawn at trial after Century objected to its admissibility.

On January 3, 1997, the district court issued findings of fact and conclusions of law rejecting Century's claims, finding that the United States' termination of Century for default was justified by Century's breach of the contract, and that Century had no valid claim for an equitable

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[4] Under § 603 of the Contract Disputes Act, subject matter jurisdiction in appeals of administrative decisions involving federal maritime contracts vests in the federal district courts, rather than in the Court of Claims (now the Court of Federal Claims) or the Court of Appeals for the Federal Circuit. *Bethlehem Steel Corp. v. Avondale Shipyards, Inc.*, 951 F.2d 92, 93, 94 (5th Cir. 1992). Government maritime contracts are otherwise governed by the Contract Disputes Act. *Id.* at 94.

adjustment to the contract. Also on January 3, 1997, the district court rendered a final judgment dismissing Century's claims against the United States with prejudice.

On January 10, 1997 Century filed a Motion to Amend or Make Additional Findings of Fact, asserting that Century had made a prima facie case on two claims that had not been rebutted by the United States: (1) a claim for extra work performed on seven RDOs in the amount of $20,583; and (2) a claim for the "contract balance" due of $1,293,218.54 resulting from the following computation:

Modified Contract Amount $8,521,910.00

Less-Payments and Deducts $6,492,159.46

Less-Work not performed $714,187.00

Less-Tow credit and Item 058 $22,345.00

Contract Balance Due $1,293,218.54

On March 4, 1997 the district court entered an order denying Century's Motion to Amend or Make Additional Findings of Fact.

Century appealed.

II. STANDARD OF REVIEW

The district court's findings of fact must be reviewed under the "clearly erroneous" standard of Fed R. Civ. P. 52(a). A finding of fact is said to be "clearly erroneous" when, notwithstanding there is evidence to support it, the reviewing court upon examination of the entire evidence is left with the definite and firm conviction that a

mistake has been committed. *Justiss Oil Co. v. Kerr-McGee Refining Corp.*, 75 F.3d 1057, 1062 (5th Cir. 1996) (citing *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). With respect to the legal conclusions reached by the trial court on the basis of the facts so found, this court will conduct a *de novo* review. *Reich v. Lancaster*, 55 F.3d 1034, 1045 (5th Cir. 1995).

III. DISCUSSION

On appeal, Century does not contest the district court's determination that MARAD properly terminated the contract for Century's default. Nor does Century reurge its administrative level claim that MARAD had withheld an excessive amount of retainage from the final payment to Century. Century argues only that the district court's judgment denying its claims for the "contract balance" and extra work was clearly erroneous and must be reversed because: (1) Century made a prima facie case at trial for its contract balance and extra work claims; (2) MARAD failed to rebut Century's proof on these claims; (3) the district court made no express findings on each of these claims; and (4) no such findings can be implied because an implied finding is not supported by the evidence.

A. Century's "Contract Balance" Claim

Century contends that it made out a prima facie case for recovery of a "contract balance" of either $1,293,218.54 or $768,889.54. It is undisputed that the total amount of the fixed-price contract, including all modifications, was $8,521,910.00, and that MARAD had paid Century

$6,492,159.46 for work completed prior to Century's termination for default, leaving an unpaid balance of $2,029,750.54 under the contract at that time. MARAD and Century presented conflicting technical expert evidence as to the estimated cost of completing the contract: Century's estimate was $736,532.00 and MARAD's was $1,260,861.00. Consequently, Century asserts, after subtracting the estimated cost of completing the work under the contract from the unpaid balance, Century is entitled to the difference, viz., either $1,293,218.54 or $768,889.54, depending on whether the Century or the MARAD estimate is used.

Century's argument lacks a sound basis in law. Termination for default is generally the exercise of the Government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. 48 C.F.R. § 49.401(a). The Government has the right to terminate a fixed-price contract for default if the contractor fails to deliver the supplies or to perform the services within the time specified in the contract. 48 C.F.R. § 49.402-1. Under a termination for default, the Government is not liable for the contractor's costs on undelivered work. 48 C.F.R. § 49.402-2(a). In contrast, under a fixed-price contract terminated for the convenience of the Government, a settlement should compensate the contractor fairly for the work actually done and for the preparations made for the terminated portions of the contract, including a reasonable allowance for profit applicable to that work and preparations. 48 C.F.R. §§ 49.201, 49.202. Anticipatory profits and consequential damages shall not be allowed under either a termination

for convenience or a termination for default of a fixed-price contract. 48 C.F.R. §§ 49.201, 49.202, 49.402-2; *See Mega Constr. Co., Inc. v. United States*, 29 Fed. Cl. 396, 475 (1993); *G.L. Christian & Assocs. v. United States*, 312 F.2d 418, 426 (Ct. Cl.), *cert. denied*, 375 U.S. 954 (1963).

Consequently, as a contractor terminated for default, Century cannot, as a matter of law, recover the "unpaid balance" of the contract less the "cost of completion" of the work under the contract. To allow such recovery would permit Century to do indirectly what it could not do directly, viz., recover anticipated but unearned profits after the contract has been terminated because of its default. A contractor's right to recover for anticipated profits arises only if the termination of the contract by the Government is wrongful and constitutes a breach. *G.L. Christian*, 312 F.2d at 423 (citing *United States v. Behan*, 110 U.S. 338, 346 (1884); *United States v. Spearin*, 248 U.S. 132, 138 (1918); *Broadbent Portable Laundry Corp. v. United States*, 56 Ct.Cl. 128, 132 (1921)). Any recovery of profits by a contractor on a contract terminated because of its own default is limited to earned profit on work actually performed prior to the termination. *Mega Constr.*, 29 Fed. Cl. at 475.

B. Century's Claim For Extra Work

Century argues that the district court's findings and conclusions are legally insufficient because the court made no express finding addressing its extra work claim, and that any implied finding by the court on the extra work issue is not supported by the evidence.

Rule 52(a) of the Federal Rules of Civil Procedure provides that "[i]n all actions tried upon the facts without a jury . . . , the court shall find the facts specially and state separately its conclusions of law thereon. . . . " The articulation of findings of fact and conclusions of law allows this court to ascertain the factual and legal bases for the district court's decision, thereby providing a sufficiently definite predicate for appellate review. *Chandler v. City of Dallas*, 958 F.2d 85, 90 (5th Cir. 1992). But Rule 52(a) "exacts neither punctilious detail nor slavish tracing of the claims issue by issue and witness by witness." *Burma Navigation Corp. v. Reliant Seahorse M/V*, 99 F.3d 652, 656 (5th Cir. 1996) (quoting *Schlesinger v. Herzog*, 2 F.3d 135, 139 (5th Cir. 1993)); *see also United States v. Northside Realty Assocs., Inc.*, 474 F.2d 1164, 1170 n.5 (5th Cir. 1973) (" 'Courts need not indulge in exegetics, or parse or declaim every fact and each nuance and hypothesis.' ") (quoting *Gulf King Shrimp Co. v. Wirtz*, 407 F.2d 508, 516 (5th Cir. 1969)). The rule is satisfied if the district court's findings give the reviewing court a clear understanding of the basis for the decision. *Burma Navigation*, 99 F.3d at 656.

If a trial judge fails to make a specific finding on a particular fact, the reviewing court may assume that the court impliedly made a finding consistent with its general holding so long as the implied finding is supported by the evidence. *In re Texas Mortgage Servs. Corp.*, 761 F.2d 1068, 1075 n.12 (5th Cir. 1985); *Gilbert v. Sterrett*, 509 F.2d 1389, 1393 (5th Cir.), *cert. denied*, 423 U.S. 951 (1975).

According to the district court's factual findings and conclusions of law, Century had been compensated for the ten valid delivery orders under which it performed "extra

work" to repair weld fractures. The court also reached the legal conclusion that "there is no valid basis for an equitable adjustment to the contract." In rejecting Century's general claim for equitable adjustment, which encompassed the extra work claim, the district court impliedly found that Century was not entitled to compensation for any other extra work.

The district court's 12-page findings of fact and conclusions of law are sufficiently detailed to adequately state the factual and legal bases for the district court's denial of Century's claim for extra work, thereby providing a sufficiently definite predicate for proper appellate review. The court's implied denial of Century's extra work claim is fully supported by the evidence, particularly Mod 9, which sets forth the percentage of completion for unfinished delivery orders; the contracting officer's decision, which provides detailed reasons for MARAD's denial of Century's claims for extra work; and the testimony of Volkmann, the contracting officer's technical representative, who testified that he personally inspected and videotaped Century's unfinished work and that he researched and drafted 90% of the contracting officer's decision with the assistance of Billy Greer, another MARAD employee who testified at trial.

In so doing, we reject Century's argument that the contracting officer's decision is a "pleading" and therefore cannot be used as evidentiary support for the trial court's implied denial of Century's claim for extra work. Under the Contract Disputes Act, contracting officers are not required to make specific findings of fact, but, if made, they "shall not be binding in any subsequent proceeding." 41 U.S.C. § 605(a). However, there is nothing in the

Contract Disputes Act that prohibits the use of the contracting officer's findings and conclusions as evidence in a subsequent *de novo* proceeding.[5] *Cupey Bajo Nursing Home, Inc. v. United States*, 36 Fed. Cl. 122, 130 (1996) ("[T]his court reviews the facts and law decided by a contracting officer similar to other evidence before it[.]"). *Accord Lathan Co. v. United States*, 20 Cl. Ct. 122, 125 (1990) ("This court may weigh the [contracting officer's] findings and conclusions as it would any other evidence."). *See Wilner v. United States*, 24 F.3d 1397, 1403-04 (Fed. Cir. 1994) (en banc) (expressly overruling pre-Contracts Dispute Act precedent holding that a contracting officer's decision "constitutes a strong presumption or an evidentiary admission . . . albeit subject to rebuttal," but cautioning that its opinion does not "suggest[ ] that a contracting officer's final decision has no place in . . . litigation in the Court of Federal Claims"). Therefore, in its role as the finder-of-fact, a district court may give the contracting officer's administrative determinations weight, not deference. *Mega Constr.*, 29 Fed. Cl. at 414. *Cf. Universal Camera Corp. v. National Labor Relations Bd.*, 340 U.S. 474, 493-94 (1951) (holding that the nonbinding findings of an NLRB "trial examiner" may be considered in a subsequent appeal to establish whether an employee's removal was supported by substantial evidence);

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[5] The Contract Disputes Act provides that, after a contracting officer renders a decision on a claim, a contractor may bring an action directly on the claim in the United States Court of Federal Claims (formerly the United States Claims Court), 41 U.S.C. § 609(a)(1), where the action "shall proceed *de novo* in accordance with the rules of the appropriate court." 41 U.S.C. § 609(a)(3).

Chandler v. Roudebush, 425 U.S. 840, 864 n.39 (1976) (holding that prior administrative findings can be used as evidence of the ultimate matters at issue in a subsequent *de novo* proceeding).

Accordingly, we conclude that the Contract Disputes Act does not preclude the use of the contracting officer's decision as evidence of the ultimate matters at issue in a subsequent *de novo* proceeding, provided that it is not given deference or a rebuttable presumption of correctness.

IV. CONCLUSION

Having reviewed the record and considered all of Century's arguments, we conclude that the district court did not commit any error of law or clear error of fact in finding Century in default and in rejecting Century's claims with prejudice. As for Century's "contract balance" argument, we conclude that there is no basis in law for a defaulted contractor to recover the difference between the unpaid balance of the contract and the cost of completing the unfinished work under the contract. It is well settled that a defaulted contractor cannot recover anticipated but unearned profits. Accordingly, the judgment of the district court is AFFIRMED.

RHESA HAWKINS BARKSDALE, Circuit Judge, specially concurring:

I concur in the judgment being AFFIRMED, but would do so on the basis that, pursuant to the district court's findings of fact and conclusions of law, and the underlying

evidence upon which they are based (especially, modification No. 009 and the Government contacting officer's written response to the request for equitable adjustment), Century Marine's claims presented in this court fail, to include its primary claim that it was not paid for work which it performed.

Concerning that primary claim, the references in the majority opinion concerning anticipated but unearned profits seem wide of the mark. Such a "lost-profit" claim is not raised by Century Marine; and, contrary to the approach taken by the majority, I would not assume that this is the indirect or implied thrust of the position asserted here. To do as the majority has done results, in my view, in this court reaching outside the record – something we should not, indeed cannot, do.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CENTURY MARINE, INC.,	§	
Plaintiff,	§	CIVIL ACTION NO.
vs.	§	H-95-633
UNITED STATES OF AMERICA,	§	
Defendant.	§	

FINAL JUDGMENT

(Filed Jan. 03, 1997)

In accordance with the Court's Findings of Fact and Conclusions of Law made this day, it is hereby

ORDERED that Plaintiff's claims against the United States are **DISMISSED WITH PREJUDICE.**

THIS IS A FINAL JUDGMENT.

Signed this 2nd day of January, 1997 at Houston, Texas.

/s/ Norman W. Black
Norman W. Black
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CENTURY MARINE, INC.,	§	
Plaintiff,	§	CIVIL ACTION NO.
vs.	§	H-95-633
UNITED STATES OF AMERICA,	§	
Defendant.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This maritime contract action arises out of a fixed price contract between Plaintiff Century Marine, Inc. and the Maritime Administration of the United States Department of Transportation ("MARAD") for steel repairs to the SS MOUNT WASHINGTON, a public vessel of the United States. Plaintiff was terminated for default and, by this lawsuit, seeks a conversion to a termination for convenience and an equitable adjustment.

Plaintiff contends that it was hindered in the performance of the contract by actions of MARAD. Defendant, the United States, contends that Century Marine entered into a fixed priced contract and simply failed to complete the work required despite MARAD's cooperation in granting three extensions of the agreed contract period. Having heard the evidence presented and arguments of Counsel, the Court concludes that termination for default was justified by Century Marine's continuing breach of the contract.

FINDINGS OF FACT

1. In connection with purposed reuse of the SS MOUNT WASHINGTON, a public vessel of the United States, MARAD solicited bids in 1992 on a contract under which the vessel's cargo and ballast tanks would be repaired and coated.

2. The work to be done by the successful bidder was described in a Steel Repair Specification drafted by MARAD and dated June 1992.

3. The Specification required renewal and coating in each cargo and ballast tank to be performed in stages. First, the steel to be renewed was to be cropped out and replaced. Next, any and all irregular surfaces in the tank were to be ground smooth with electrical or pneumatic grinders. After the grinding was finished, the tank was to be sandblasted and, after the sandblasting residue was cleaned, the tank was to be coated.

4. The Specification and Contract described the steel renewals in Items 009, titled TANK STEEL RENEWALS GENERAL, and Items 016 through 048, listing the renewals to be accomplished as specific pieces of steel in each tank.

5. The steel to be replaced, as listed in Items 016 through 048, was described by location and dimension. The weight of steel required to replace these segments was calculated from measurements taken aboard the vessel and from the ship's drawings, then tabulated in Items 016 through 048 as "required steel."

6. While Items 016 through 048 listed "required steel" quantities, Section F to Item 009 specifically notified the Contract that:

> All weights for steel renewals given in these specifications are *approximate* based on the sizes shown in the applicable drawings and are furnished for the general assistance of the contractor in bidding. However, the contractor shall be responsible for his own *calculations and measurements,* both for estimating and for installing this steel. The list of parts to be renewed will be renewed regardless of the actual weight.

(emphasis in original).

7. The Specification and the Contract contained, as Items 049 and 050, "growth" items requiring the contractor to make 60,000 pounds of steel available for additional renewals to be identified as the work progressed.

8. While subject to growth under Items 049 and 050, the "required weight" of steel tabulated in Items 016 through 048 was (to a reasonable approximation for which Century Marine assumed the risk) all that Century Marine was required to replace under the contract.

9. The Specification and the Contract described the coating to be accomplished in Item 006, titled CARGO AND BALLAST TANK COATING. Section C. 5. of this item required that:

> *All irregular surfaces* such as, but not limited to, weld burrs, remnants of old structure, heating coil bracket clips, fitting aids left from previous

> repairs, etc., shall be ground flush and smooth prior to blasting.

(emphasis in original).

10. The Specification and Contract contained, in Item 014, a GENERAL ALLOWANCE FOR MINOR FRACTURE REPAIRS, requiring the contractor to plan for the repairs of small fractures in the steel that might be uncovered in up to 100 separate locations. Such fractures were to be repaired by "*drilling* small stopper holes, at least .25" diameter, and using grinding tools excavating along the fracture to provide for full penetration welds."

11. Section C.9. of the Specification and the Contract, Item 006, titled CARGO AND BALLAST TANK COATING, required that:

> *Steel Repairs* All repairs requiring hot work are to be completed prior to application of any coatings. It is anticipated that all "*major*" repairs requiring hot work will be completed before commencement of grit blasting within tanks, however minor welding covered in Item 014) shall be completed between grit blasting completion and application of the first prime coat.

(emphasis in original).

12. The Preamble of the Specification and the Contract, required that: "All new installations, repairs and/or renewals are to [sic] completed to the satisfaction of the attending MARAD (Maritime Administration) representative, and cognizant regulatory concerns."

13. Prior to submitting its bid, Century Marine sent personnel aboard the SS MOUNT WASHINGTON on three occasions to inspect the work that would be

required. The first inspection was conducted over three consecutive days and involved some 20 people.

14. Century Marine, Inc. submitted a bid for the contract, by then numbered Bid Solicitation DTMA93-92-B-200038, listing as its total bid $7,471,910.00.

15. Century Marine was notified by MARAD's letter of September 30, 1992 that it had been awarded contract No. DTMA93-92-B-200038. The agreed total price was $7,471,910.00.

16. Modification No. 0001 to the Contract was issued on October 5, 1992. This Modification established the Notice to Proceed date as October 5, 1992, the contract period as 210 calendar days, and the contract's completion date as May 3, 1993.

17. Century Marine subcontracted the rigging, sandblasting, and coating work to SIPCO, Inc.

18. Century Marine began work on the SS MOUNT WASHINGTON shortly after the Notice to Proceed on October 5, 1992.

19. As the Contract's performance began, the work in each tank was initiated by SIPCO by rigging scaffolding to allow access to the upper areas of the tank. After a tank was rigged, Century Marine personnel cropped the steel to be replaced, welded in new steel, and ground all irregular surfaces smooth. SIPCO workers sandblasted the tank after the grinding was completed and Century Marine personnel repaired any fractures found during the sandblasting. SIPCO workers then washed out and coated the tank.

20. After the sandblasting began in the SS MOUNT WASHINGTON's cargo and ballast tanks, a number of minor weld defects were discovered. The repair of these defects was initially accomplished under the Contract's Item 014 even though the drilling described in that item was not required. After 100 of the weld defects were repaired, Century Marine and MARAD agreed that the repair of the weld defects would be treated separately as a growth item to the Contract.

21. When SIPCO began to pressure Century Marine to complete the steel repairs and grinding faster in order to free scaffolding for use in subsequent tanks, Century Marine proposed a scheme whereby any fractures or weld defects found during the sandblasting would be masked with tape and repaired after the tank's coatings had dried. Since removal of the tape removed part of the coating, SIPCO was required to recoat after the fracture repairs were complete. It was to accommodate Century Marine, already behind schedule, that MARAD agreed to Century Marine's proposal that the fractures be masked and repaired later.

23. Under the system of masking fractures and repairing them after the coatings had dried, more work was required of both Century Marine and SIPCO. The agreed rate of the payment for the repairs to the weld defects was $26 for each eight inches of repaired weld, $13 to compensate Century Marine for the cleaning and welding and $13 to compensate SIPCO.

24. After the repairs to the first 100 weld defects and fractures were compensated under Contract Item 014, Century Marine was compensated for the repairs and

recoating of all weld defects found in the tanks under Delivery order Nos. 136, 141, 148, 159, 160, 161, 166, 173, 179, and 180.[1]

25. When Century Marine fell so far behind its work schedule that its completion of the Contract by May 3, 1993 seemed impossible, an extension was negotiated. Modification No. 0003 to the Contract was issued on February 8, 1993 to extend the work period of the Contract by 31 days until June 3, 1993.

26. When Century Marine fell further behind its work schedule after the Contract's extension, a progress payment was reduced by 21% and further progress payments were suspended on February 25, 1993.

27. After progress payments were suspended, Century Marine increased its workforce on the SS MOUNT WASHINGTON and began to catch up to its schedule. Progress payments were reinstated and another was made on March 23, 1993.

28. When it became clear to MARAD that Century Marine could not meet the June 3, 1993 completion date, a further extension was negotiated. Modification No. 0005 to the Contract was issued on March 29, 1993 and, among other adjustments, extended the work period of the Contract by another 33 days until July 6, 1993.

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[1] The government included Delivery Order No. 96 on its Exhibit List and it was admitted into evidence without objection from Plaintiff, however, Delivery Order No. 96 is not in the court's file.

29. When Century Marine failed to complete the Contract by July 6, 1993, MARAD granted another extension, but stipulated that the delay should be at no additional cost to the government. Modification No. 0007 to the Contract was issued on July 9, 1993 and extended the work period of the Contract by 71 days until September 15, 1993.

30. When it finally became clear to MARAD that Century Marine could not complete the Contract by September 15, 1993, the Contract was terminated for default. Century Marine was notified of the termination by the Contracting Officer's letter of September 8, 1993 and was "directed to immediately stop work, terminate any subcontracts, and place no further orders."

31. Modification No. 0009 to the Contract was issued on September 22, 1993 to adjust the Contract for unfinished work and justify the payment to Century Marine of a final progress payment.

32. In total, progress payments of $5,975,089 were made to Century Marine under Contract No. DTMA93-92-B-200038.

33. After the termination of Century Marine, the SS MOUNT WASHINGTON was made seaworthy by Gulf Copper & Manufacturing Corporation and towed to Norfolk, Virginia. In Norfolk, the sandblasting and coating left unfinished by Century Marine was accomplished by Marine Hydraulics, Inc.

34. The Contracting Officer issued a final decision on Century Marine's request for equitable adjustment on December 14, 1994.

CONCLUSIONS OF LAW

1. "[C]ontracts for the repair of United States government ships are governed by the provisions of the Suits in Admiralty Act, 46 U.S.C. App. §§ 741-752, and are entrusted, as maritime contract actions, to the admiralty jurisdiction of the United States district courts." *Bethlehem Steel Corp. v. Avondale Shipyards, Inc.*, 951 F.2d 92 (5th Cir. 1992) (citing *United States v. United Continental Tuna Corp.*, 425 U.S. 164 (1976)). Pursuant to the Contract Disputes Act, 41 U.S.C. § 603, district courts may hear appeals from the administrative determination of claims.

2. Pursuant to the Contract Disputes Act, 4 U.S.C. § 603, and Suits in Admiralty Act, 46 U.S.C. App. § 741 *et seq.*, a party to a maritime contract with the government may seek in district court a trial de novo regarding the contracting officer's final decision on an administrative action. *Misano di Navigazione v. United States*, 968 F.2d 273, 274 (2nd Cir. 1992).

3. The September 30, 1992 acceptance of Century Marine's bid created a contract between Century Marine and the United States. *United States v. Purcell Envelope Co.*, 249 U.S. 313 (1919).

4. Where the language of a contract is "plain and unambiguous on its face," the parole evidence rule forbids the admission of evidence to contradict or modify the contract's language. *Bistline v. United States*, 640 F.2d 1270, 1274 (Ct. Cl. 1981); *Corbitt v. Diamond M. Drilling Co.*, 654 F.2d 329, 332-33 (5th Cir. 1981); *United States v. Bethlehem Steel Co.*, 215 F. Supp. 62, 68 (D.Md. 1962), *aff'd*, 323 F.2d 655 (4th Cir. 1963).

5. Neither may parole evidence be used to create an ambiguity in the contract's language. *King Fisher Marine Serv., Inc. v. United States*, 16 Cl. Ct. 231, 234 (1989); *Orkin Exterminating Co., Inc. v. Federal Trade Commission*, 849 F.2d 1354, 1360 (11th Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989).

6. If a contractor does not provide for a known contract requirement in making its bid, it has assumed the monetary risk of being forced to provide that which it knows was required. *Appeal of RJS Constructors Inc.*, 1992 WL 382646, 93-2 BCA ¶ 25,673 (Dec. 16, 1992). *See also Appeal of Walsky Constr. Co.*, 1983 WL 13169, 83-2 BCA ¶ 16,771 (Jul. 29, 1983); *Perry & Wallis, Inc. v. United States*, 192 Ct. Cl. 310 (1970). The specific segments of steel to be replaced were described by their locations and dimensions and the estimated weights were those of the steel to be cropped out and replaced. While the replacement of this steel required the purchase of a greater weight of steel due to the varied shapes of the pieces to be removed and the inevitable wastage and mistakes, the structure of the Contract allocated those losses to Century Marine.

7. The contract only estimated the required quantity of steel that might be required in accomplishing the renewals in the tanks and government estimates included in government contracts are not warranties. *Stuyvesant Dredging Co. v. United States*, 834 F.2d 1576 (Fed. Cir. 1987). The figures at issue were clearly identified as "approximate" and therefore created no ambiguity in the contract. *Bishop Eng'g Co. Inc. v. United States*, 180 Ct. Cl. 411 (1967).

8. Century Marine has not shown the Court such errors in the Specification's estimates of the weight of steel that required renewal to claim that it was required to replace any steel that was not contemplated in its fixed price bid.

9. In its bid, a government contractor is presumed to have allowed for the potential expense of any factors that might interfere with its performance of the contract. *Broome Constr., Inc. v. United States,* 492 F.2d 829 (Ct. Cl. 1974) (citing *MacArthur Brothers Co. v. United States,* 258 U.S. 6 (1922); *Christie v. United States,* 237 U.S. 234 (1915); *Hardeman-Monier-Hutcherson v. United States,* 458 F.2d 1364 (Ct. Cl. 1972); and *Banks Constr. Co. v. United States,* 364 F.2d 357 (Ct. Cl. 1966)).

10. There was no ambiguity in the contract's requirements that "*All irregular surfaces* such as, but not limited to, weld burrs, remnants of old structure, heating coil bracket clips, fitting aids left from previous repairs, etc., shall be ground flush and smooth prior to blasting." The language is explicitly inclusive and the requirement is that *everything* be ground "flush and smooth."

11. Absent ambiguity, the Contract's language, including the words "flush and smooth" in its Clause 006 are read in their ordinary or popular sense. *Western States Constr. Co., Inc. v. United States,* 26 Cl. Ct. 818, 823 (1992).

12. A specialist's understanding of particular wording will prevail "[i]f the special usage relied upon is in fact the settled habit of expression of the group in question and not merely the expression of a few persons, and if the parties to the contract are members of the group . . . " *Western States Constr.,* 26 Cl. Ct. at 824.

13. While Century Marine alleges a trade usage according to its expert, William Guerry, that the words "flush and smooth" are given a much less restrictive meaning in his practice of shipfitting and inspecting marine coatings, Century Marine has not shown that Mr. Guerry's understanding is the settled habit of expression of any particular group or that any contracting official at MARAD is a member of that group.

14. A trade usage supersedes the ordinary or popular sense of contract wording "where the situation is such as to justify the assumption that these special usages would more nearly approximate the understanding of the parties." *Western States Constr.*, 26 Cl. Ct. at 824.

15. Even if Plaintiff's expert, William Guerry, relates a trade usage in the practice of inspecting marine coatings by which the words "flush and smooth" are given a much less restrictive meaning, neither Century Marine nor MARAD was aware of this trade usage when the Contract was created on September 30, 1992 or during its performance. This trade usage does not therefore create an ambiguity in the Contract.

16. The inspection teams held Century Marine to a reasonable and appropriate standard and did not require any grinding beyond that contemplated in Century Marine's fixed price bid. *See Misano di Navigazione*, 968 F.3d 273.

17. While the problem of the weld defects was not anticipated as the Contract was negotiated, it was quite properly handled after the performance began under a series of Delivery Orders. The parties negotiated the rate of the payments for those repairs at $26 for each eight

inches of repaired weld, $13 to compensate Century Marine for the cleaning and welding and $13 to compensate SIPCO for the repairs to the coatings after the weld was repaired.

18. After the repairs to the first 100 weld defects and fractures were compensated under Contract Item 014, Century Marine was compensated for the repairs and recoating of all weld defects found in the tanks under Delivery Order Nos. 136, 141, 148, 159, 160, 161, 166, 173, 179, and 180.

19. Absent affirmative misrepresentation, the government is not a guarantor against poor judgment with respect to methodologies selected by contractor. *Granite Constr. Co. v. U.S.*, 24 Cl. Ct. 735 (1991). While Century Marine's methods of masking the repairs while the coatings were applied, then repairing the weld defects and the coating system respectively were cumbersome, it was Century Marine who chose to use them.

20. The United States did not withhold superior knowledge, provide defective or misleading specifications, share in a mutual mistake, or accept a bid so obviously low as to evidence a unilateral mistake, so there is no valid basis for an equitable adjustment to the contract. *American Ship Bldg., Co. v. United States*, 654 F.2d 75 (Ct. Cl. 1981).

21. Unless the United States or one of its agents grants an extension, a contract's time provision is never reformed or modified. *Simmonds Precision Products, Inc. v. United States*, 546 F.2d 886 (Ct. Cl. 1976).

22. After July 9, 1993, no extension of the Contract's completion date past September 15, 1993 was granted, so Century Marine was in default when it became clear that the Contract would not be completed by that date.

23. There being no valid excuse for Century Marine's failure to complete the Contract, the United States' termination of Century Marine for default was justified by a breach of the Contract.

24. Any conclusion of law more properly characterized as a finding of fact shall be adopted as such. Any finding of fact more properly characterized as a conclusion of law shall be adopted as such.

25. For the foregoing reasons, Century Marine's Complaint and all Amended Complaints are DISMISSED WITH PREJUDICE.

Signed this 22nd day of January, 1999 at Houston, Texas.

/s/ Norman W. Black
NORMAN W. BLACK
UNITED STATES
DISTRICT COURT

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20281

CENTURY MARINE INCORPORATED

Plaintiff – Appellant

v.

UNITED STATES OF AMERICA

Defendant – Appellee

Appeal from the United States District Court
for the Southern District of Texas, Houston

ON PETITION FOR REHEARING

(Filed Oct. 29, 1998)

Before BARKSDALE, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is DENIED.

ENTERED FOR THE COURT:

/s/ James L. Dennis
United States Circuit Judge

REHG-2

CLERK'S NOTE:
SEE FRAP AND LOCAL
RULES 41 FOR STAY OF THE
MANDATE.

AMENDMENT OF SOLICITATION/
MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

2. AMENDMENT/MODIFICATION NO.

0009

3. EFFECTIVE DATE

9/22/93

4. REQUISITION/PURCHASE REC. NO.

5. PROJECT NO. *(If applicable)*

6. ISSUED BY CODE

DSDOT/Maritime Administration
American Foreign Shipping Co., Inc.
General Agent
220 Lenox Avenue
Westfield, NJ 07090

7. ADMINISTERED BY *(If other than 1 thru 6)*

CODE

8. NAME AND ADDRESS OF CONTRACTOR
(Na., street, county, state and ZIP Code)

Century Marine, Inc.
200 Pier Road
Orange, TX 77630

Attn: C. Glen Vaglica

(✓) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED *(SEE ITEM 11)*

X 10A. MODIFICATION OF CONTRACT/ORDER NO.

DTMA93-92-C-200038

10B. DATED *(SEE ITEM 13)*

September 30, 1992

CODE FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

[ ] The above numbered solicitation is amended to set forth in Item 14. The hour and date specified for receipt of Offers

[ ] is extended, [ ] is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items B and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(✓) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(Such as changes in paying office, appropriation date, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR A3.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

X D. OTHER *(Specify type of modification and authority)*

UNILATERAL

E. IMPORTANT: Contractor

[X] is not.

[ ] is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible)*

SS MOUNT WASHINGTON – Contract DTMA93-92-C-200038 – The contract is modified as below:

The purpose of this modification is to adjust contract for unfinished items required by contract:

Continued on succeeding pages)

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER *(Type or print)*

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)*

Harry W. Marshall

16B. UNITED STATES OF AMERICA

BY /s/ Harry W. Marshall
(Signature of Contracting Officer)

16C. DATE SIGNED

9/24/93

30-105

NSN 7540-01-152-2070 STANDARD FORM 30 (REV
PREVIOUS EDITION UNUSABLE Prescribed by OEA
FAR (45 CFR) 53-243

S.S. MOUNT WASHINGTON – CONTRACT
DTMA93-92-C-200038, MODIFICATION 0009

A)	UNFINISHED ORIGINAL ITEMS	COST	% COMP	REMAINING
2	Towing from Topside Repair Yard	$44,200	0	$44,200
	TOTAL CREDIT CLIN 0002			$44,200
	CURRENT TOTAL CLIN 0002			$44,200
	REVISED TOTAL OF CLIN 0002			$0
6	Cargo & Ballast Tank Coating	$2,712,000	65	$949,200
	TOTAL CREDIT CLIN 0003			$949,200
	CURRENT TOTAL CLIN 0003			$3,100,500
	REVISED TOTAL OF CLIN 0003			$2,151,300
9	Tank Steel Renewals – General	$2,887	93	$202
11	Cargo Tank Ladders & Platforms	$62,570	90	$6,257
13	General Allowance f/Reach Rod Repairs	$6,880	95	$344
	TOTAL CREDIT CLIN 0005			$6,803
	CURRENT TOTAL CLIN 0005			$100,317
	REVISED TOTAL OF CLIN 0005			$93,514
32	No. 6P Segregated Ballast Tank	$231,100	97	$6,933
33	No. 6S Segregated Ballast Tank	$260,800	97	$7,824
34	No. 7C Cargo Tank, FR: 81-77	$195,300	92	$15,624
35	No. 7P Ballast Tank	$134,850	97	$4,046
36	No. 7S Ballast Tank	$118,575	97	$3,557
37	No. 8C Ballast Tank, FR: 77-73	$136,250	92	$10,900
38	No. 8P Cargo Tank	$4,000	95	$200
39	No. 8S Cargo Tank	$3,000	95	$150
40	No. 9C Ballast Tank, FR: 73-69	$133,000	92	$10,640
41	No. 9P Cargo Tank	$3,910	95	$196
42	No. 9S Cargo Tank	$5,000	95	$250
43	No. 10C Cargo Tank, FR: 69-65	$148,800[1]	90	$14,880
44	No. 10P Cargo Tank	$12,500	92	$1,000
45	No. 10S Cargo Tank	$6,000	92	$480
46	No. 11C Cargo Tank, FR: 65-61	$210,200	80	$42,040
47	No. 11P Cargo Tank	$4,185	92	$335
48	No. 11S Cargo Tank	$4,650	92	$372
	CREDIT CLIN 0006 FROM SECT. "D" BELOW			$35,000
	TOTAL CREDIT CLIN 0006			$154,427
	CURRENT TOTAL CLIN 0006			$2,352,729
	REVISED TOTAL OF CLIN 0006			$2,198,302
49	Extra Steel Contig to Repairs Underway	$141,160	98	$2,823
	TOTAL CREDIT CLIN 0007			$2,823
	CURRENT TOTAL CLIN 0007			$141,160
	REVISED TOTAL OF CLIN 0007			$138,337
51	Tank Reconfiguration	$147,500	90	$14,750
	TOTAL CREDIT CLIN 0009			$14,750
	CURRENT TOTAL CLIN 0009			$147,500
	REVISED TOTAL OF CLIN 0009			$132,750
52	Cargo Pump Turbine Installation	$338,000	90	$33,800

	TOTAL CREDIT CLIN 0010			$33,800
	CURRENT TOTAL CLIN 0010			$338,000
	REVISED TOTAL OF CLIN 0010			$304,200
54	Main Cargo Pump Strainers	$12,600	90	$1,260
55	Evaporator Pump Installation	$1,100	95	$55
58	Pump Room Gauge Connections	$3,450	0	$3,450
63	Stripping Pump Survey & Repairs	$21,500	90	$2,150
67	Ventilation Duct Repairs	$6,000	85	$900
70	Main Circulating Pump Repairs	$2,500	98	$50
82	Repairs to Atomizing Steam Lines	$1,000	95	$50
	TOTAL CREDIT CLIN 0011			$7,915
	CURRENT TOTAL CLIN 0011			$202,860
	REVISED TOTAL OF CLIN 0011			$194,945
	Subtotal of Original Item Credits			$1,178,918

B)	UNFINISHED DELIVERY ORDERS ISSUED	AGREED PRICE	% COMP	REMAINING
22	Cntr Tk Lowr Ladr Platforms (Itm 011.02)	$9,468	95	$473
32	Seal Welds (Ref: Cargo Tanks) (Itm 096)	$19,020	70	$5,706
50	Steel Repairs #11C Cargo Tank (Itm 046)	$11,943	95	$597
60	Miscellaneous Bulkhead Inserts	$11,720	95	$586
66	Cargo Pump Strainer (3 Units) (Itm 054)	$23,819	95	$1,191
85	After Cofferdam Filling System, #11C	$4,660	95	$233
104	Steel Repairs #11C Cargo Tank (Itm 045)	$841	95	$42
118	Reach Rod Suprt Chnls #9C Cargo Tk (Itm	$982	97	$29
134	Reach Rod " " #18C " (Itm 013)	$11,350	97	$341
135	Quarters Repairs (Forward & Aft)	$68,592	95	$3,430
162	Refrigeration & A.C. Modifications	$135,000	95	$6,750
185	Steel Repairs Tank #11C	$6,160	0	$6,160
201	Cargo Pump Turbine Installation	$2,880	35	$1,872
204	Manhole Relocation	$2,230	97	$67
208	Weathertight Door Knife Edge	$726	90	$72
218	Cargo & Stripping Reach Rods (10 P/S)	$2,696	95	$135
219	I.G.S. Scrubber Pump Expansion Joint	$784	95	$39
226	Main Cargo Pump #1 Rotor Removal	$3,300	60	$1,320
231	NEMA Stop Relay & Control Boxes	$7,610	90	$761
235	Miscellaneous Supplies	$3,000	71	$870
237	Bolt Pins	$6,040	90	$604
239	I.G.S. Control Systems	$3,967	0	$3,967
240	Spare Parts	$1,980	95	$99
250	Emergency Diesel Generator (Auto Start)	$1,090	30	$763
251	Cgo Pump Turbn Foundations (Units 2-3-4)	$2,496	90	$250
253	Aft A.C. Ventilator Duct (Insulation)	$2,500	0	$2,500
255	No. 3 Cargo Pump Turbine Chocking	$4,000	90	$400
257	Secretarial Services	$321	80	$64
264	Fracture Repairs in Cargo Tanks 7C	$882	0	$882
272	Spare Parts	$1,970	40	$1,182
	Subtotal			$41,385
	CREDIT CLIN 0012A (468 HRS)			$12,168
	CURRENT TOTAL CLIN 0012A			$1,240,772
	REVISED TOTAL OF CLIN 0012A			$1,228,604
	CREDIT CLIN 0012B (61 HRS)			$1,220

CURRENT TOTAL CLIN 0012B		$25,200
REVISED TOTAL OF CLIN 0012B		$23,980
CREDIT CLIN 0012C		$16,012
CURRENT TOTAL CLIN 0012C		$360,792
REVISED TOTAL OF CLIN 0012C		$344,780
CREDIT CLIN 0012D		$11,985
CURRENT TOTAL CLIN 0012D		$180,000
REVISED TOTAL OF CLIN 0012D		$168,015

C) UNOBLIGATED SUPPLEMENTAL ($5,558) TO BE CREDITED FROM THE CONTRACT IN ADDITION TO CREDITS IN PART "B" ABOVE

CREDIT CLIN 0012C		$2,544
CURRENT TOTAL CLIN 0012C		$344,780
REVISED TOTAL OF CLIN 0012C		$342,236
CREDIT CLIN 0012D		$3,014
CURRENT TOTAL CLIN 0012D		$168,015
REVISED TOTAL OF CLIN 0012D		$165,001

D) UNFINISHED PART OF ITEMS PREVIOUSLY PROGRESSED AT 100% (WORK REQUIRED PER PREAMBLE & GENERAL SPECIFICATION)

Forward Pump Room Coatings	$3,000	0	$3,000
Deck Coatings CT 1 to 5	$25,000	0	$25,000
After Pump Room Coatings	$5,000	0	$5,000
Extermination Services (Rats)	$2,000	0	$2,000
Subtotal . . . . . (To be deducted from CLIN 0006 above)			$35,000

**** TOTAL CREDIT DUE ****	$1,260,861
CURRENT CONTRACT AMOUNT	$8,341,918
REVISED CONTRACT AMOUNT	$7,081,049